THE HIGH COURT OF UTTARANCHAL AT NAINITAL.

Appeal from Order No. 1518 of 2001
Old F.A.F.O. No. 734 of 1982

1. Satya Singh S/O Inder Singh,
2. Smt. Mal Dai W/O Satya Singh,
   Residents of village Bakhtawarpur,
   Pargana Pacchwa Dun, P.C. Rajwala,
   District Dehra Dun. (Claimants)

… **Appellants.**

Versus

1. Chairman State Road Transport Corporation, Lucknow.
2. Uttar Pradesh State Road Transport Corporation,
   Through Regional Manager, Gandhi Road, Dehradun.
3. Mahender Kumar, S/O Shri Kishan Lal,
   Driver of U.P. State Road Transport Corporation
   At Dehradun.

… **Respondents.**

Sri D.C.S.Rawat holding brief of Sri Rajendra Dobhal, learned Counsel for the appellants.
Sri A.N. Sharma, learned counsel for respondents.

Date May 03, 2006.

(Hon'ble B.S. Verma, J.)

This appeal has been preferred under Section 110-D of the Motor Vehicles Act, 1939 (***for short the Act***) against the judgment and order dated 3-8-1982 passed by the Motor Accident Claims Tribunal/District Judge, Dehradun (***for short the Tribunal***) on M.A.C. Petition No. 138 of 1979, Satya Singh and another Vs. Chairman, U.P.S.R.T.C. and another, whereby the claim petition was dismissed on the ground that the deceased Bishan Singh died in the accident as a result of his own negligence.

Brief facts, giving rise to the present appeal are that Bishan Singh, son of the claimants, aged 22 years and carpenter by profession and earning Rs. 450/- per month, lost his life in a motor vehicle accident, which occurred due to rash and negligent driving by the driver of U.P.S.R.T.C. bus No. USK-7238, as a result of the

injuries suffered by him in the accident on 23-4-1979 at Rajpur Road ner Gandhi Park Dehradun, P.S. Kotwali Dehradun. The claimants claimed compensation of Rs. 40,000/- against the U.P.S.R.T.C.

The Opposite Parties Nos. 1 to 3 filed their joint written statement and denied the allegations made in the claim petition. In additional pleas, bar of limitation was raised and it was asserted that there was no negligence on the part of the driver of the offending bus. According to them on the fate-ful day, the bus started its journey from City bus station to D.L. Road terminus. The accident occurred near M/s Bombay Jwellers Rajpur Road. At the relevant time the road was heavily blocked due to rush of trucks. The deceased cyclist was coming behind the bus and chose to overtake the bus from its right side and in doing so, he suddenly came before the bus in question and lost all his mental balance and dashed with the right side of the body of bus. It was asserted that on humanitarian ground the driver of the bus took the cyclist to Dehradun Hospital and got him admitted. It was pleaded that a financial assistance of Rs. 1,000/- was given to the claimants by the U.P.S.R.T.C.

On the pleadings of the parties, the learned Tribunal framed the following issues in the case:-

1. Whether the accident took place on account of rash and negligent driving of the bus by opposite party no.3 or as alleged by the opposite party in para 3 of the written statement?

2. To what amount of compensation, if any, are the applicants entitled?

The learned Tribunal after recording the evidence of the parties and perusing the same took both the issues together. The learned Tribunal did not find favour with the contention of the claimant-appellants that the accident in question was the result of rashness and negligence on the part of the bus driver, rather it

accepted the stand taken by the opposite party that the deceased cyclist himself was negligent and accordingly, the claim petition was dismissed.

In this appeal, the impugned judgment and order of the Tribunal has been assailed on the ground that the finding of the Tribunal on the issue of rash and negligent driving on the part of the deceased is not tenable and is not based on the evidence.

I have heard learned counsel of the parties and perused the evidence on record including the lower court record.

At the outset it may be noted that the learned Tribunal has not worked out the amount of compensation in the impugned judgment, which would have been payable to the claimants, had they been successful in establishing the negligence on the part of the driver of the bus.

It this appeal, it has to be examined whether the motor accident was caused due to the negligence on the part of the bus driver or due to the own negligence of the deceased and whether it is a case of contributory negligence on the part of the driver of the offending bus and the deceased-cyclist.

So far as the issue of negligence is concerned, it may be seen that the driver of the bus was challaned under Section 279 and 304-A of the I.P.C. by the police of Kotwali Dehradun and on the basis of the police investigation a criminal case no. 565 of 1980 State Vs. Mahendra Kumar was initiated on the basis of the charge-sheet submitted by the police. It may also be noted that in the proceedings for compensation under the Motor Vehicles Act, strict proof of fact is not required to establish negligence and only prima facie it has to be seen whether the accident can be said to be result of rashness and negligence. In the present case, from the side of the opposite parties, certified copy of the judgment of acquittal in the aforesaid case was

filed. Accused persons in criminal cases are acquitted many a times on technicalities and on account of the witnesses having been turned hostile. The fact that the driver of the bus was charge-sheeted by the police for the offences under Section 279 and 304-A I.P.C. is indicative of the fact that the driver of the bus was prima facie found negligent in driving the vehicle otherwise he would not have been charge-sheeted for the offence under Section 279 I.P.C. Besides, it has to be seen whether the claimants have led any evidence to corroborate the contention regarding negligence of bus driver before the Tribunal or not.

The record reveals that the claimants have produced P.W.1, Shafique Ahmad on the point of negligence of the driver. P.W.1 has stated that he was running a hair cutting shop in the name and style Popular Hair Dresser for the last 8 years and his shop is situate in front of the Bombay Jwellers. It is not disputed that the accident occurred near the shop “Bombay Jwellers”. He further stated that he had seen the occurrence. He also stated that the bus was being driven at a high speed. In his cross-examination this witness stated that the accident occurred near the foot path and the distance from foot-path to the center of road is 25 ft. The accident in question had taken place on 23-4-1979 and the statement of PW 1 was recorded on 16-3-1983, i.e. about four years after the accident. This witness was cross-examined and a mild suggestion regarding the speed of the bus was put to him and he stated that he cannot tell the speed of the bus at the time of accident.

It is admitted case of the parties that at the place of accident, there was heavy rush of trucks who were waiting for their turn near the Petrol Pump. At such a place, in my view, the driver of the bus should have taken full care and caution to avoid any accident. The driver of the offending bus Mahendra Kumar was produced as D.W.1. In his examination-in-chief, he has nowhere stated that after the accident, he made report of the accident to the police or to his higher authorities, though in the cross-examination,

he stated that he lodged the report, but he could not say as to what were the contents of the report lodged by him. If the statement of P.W.1, who is an independent eye witness of the occurrence is read coupled with the fact that the police on investigation found the driver of the bus responsible for the offence under Sections 279/304-A IPC, it comes out that prima facie the accident occurred due to the fault on the part of the driver of bus. Had the driver been careful and cautious at such a busy place, where there was a queue of trucks by the side of the road near petrol pump, the accident could have been avoided, but at the same time, the cyclist deceased also appears to have contributed to the negligence at the busy place. The cyclist-deceased would not have taken the risk to overtake the bus, where a number of trucks were waiting for their turn near the petrol pump. From a perusal of the statement of P.W.1 it comes out that the cyclist-deceased was collided with the right side body of the bus, therefore, it can be safely held that the cyclist had also contributed to the negligence. Taking into consideration the fact that the driver of the bus was challaned by the police, the negligence on the part of the bus driver is assessed to be 75% and 25% on the part of the deceased.

Accordingly, it is held that the bus driver was negligent to the extent of 75% and for the rest 25%, the deceased was at fault, who tried to overtake the bus at such a busy place. The point of negligence is accordingly decided.

Now, it has to be seen as to what compensation, the claimants are entitled. In the claim petition, the income of the deceased was mentioned to be Rs. 450/- per month from the work of carpenter. P.W.2 Satya Singh has stated that his son used to earn 450/---500/- per month from carpentry. It has not been shown that the deceased was getting his amount regularly, therefore, it can be taken that the deceased would have been getting at least 300/- per month. P.W.2 has stated his age on the date of his statement as 54 years. The accident took place four years earlier thereby he was

aged 50-51 years at the time of accidental death of his son. The mother of the deceased was shown to be aged 45 years in the claim petition.

The income of the deceased may be accepted as Rs. 300/- per month. Out of this amount, 1/3rd deduction can be made towards his personal expenses. He might have been assisting his parents @ Rs. 200/- per month. Since the deceased was unmarried, therefore, for working out compensation, the age of his mother shall be considered. The age of father was 51 years and that of his mother was 45 years. By taking the aid of the Second Schedule of Section 163-A of the Act, the appropriate multiplier would be 13. Thus total loss of dependency comes to 200 x 12 x 13 = 31,200/-. The deceased was found to have contributed to the negligence to the extent of 25%, therefore, 1/4th of this amount shall be deducted, which comes to Rs. 7,800/-. The remaining amount comes 32,200 (-) 7,800/- = 23,400/-. Having considered the facts and circumstances of the case, I am of the view that the amount of Rs. 23,400/- will be a just and fair compensation to be awarded to the claimants. The claimants shall also be entitled to simple interest @ 6% per annum on this amount from the date of claim petition, i.e. from 19-10-1979 till the date of payment. The compensation along with interest shall be payable by the owner of the vehicle-respondent nos. 1 and 2.

For the reasons and discussion aforesaid, the appeal deserves to be partly allowed.

The appeal is partly allowed. The impugned judgment and order, under appeal, is set aside. The claimants shall get compensation of Rs.23,400/- along with 6% interest from the date of claim petition till payment, payable by the respondent nos. 1 and 2, the owner of the vehicle. No order as to costs. Both the appellants shall be paid the amount of compensation in equal share.

(B.S.Verma, J.)

RCP